

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

Fiore A Casale and
Rose Ann Casale,

Debtor.

No. 13-13243-T7

Chapter 7

**MOTION FOR RELIEF FROM THE
AUTOMATIC STAY**

Compass Bank, a creditor herein, hereby moves that this court enter an Order granting it Relief from the Automatic Stay of 11 U.S.C. § 362(a) to permit it to exercise its rights under a Promissory Note / Mortgage entered into with Fiore and Rose Casale (“Debtor”) and to obtain possession of the subject property. The bases of Compass Bank’s Motion are set forth in the memorandum attached hereto.

DATED this 24th day of December, 2013.

Poli & Ball, P.L.C.

By/s/James E. Shively #9597

James E. Shively
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Phoenix, Arizona 85018
Telephone: 505-243-1887
Attorneys for Compass Bank

MEMORANDUM

On October 2, 2013, Debtor commenced the above-captioned Chapter 7 case. Linda S. Bloom was appointed trustee of the debtor's bankruptcy estate.

On April 3, 2007, for valuable consideration, Debtor, Roseann Casale, individually, and Rose Ann Casale and Fiore A. Casale, Trustees of Casale Trust executed a promissory note in the original principal amount of \$110,000.00 for the benefit of Compass Bank (the "Promissory Note"). A copy of the Promissory Note is attached hereto as **Exhibit A**. Debtor is presently obligated to Compass Bank under the Promissory Note in the principal amount of \$87,207.47, plus applicable taxes, late charges, and attorneys' fees and costs (the "Debt"). Repayment of the Debt is secured by real property located at 1301 Montara Dr. NW, Los Lunas, NM 87031 (the "Property") as legally described in a Mortgage executed by Rosann Casale and Fiore Casale as trustees of the Casale family trust on April 3, 2007 (the "Mortgage"). A copy of the Mortgage is attached hereto as **Exhibit B**.

The Debtor has been in default to Compass Bank on this Promissory Note since February 28, 2013.

According to the Debtors' schedules the value of the Property does not exceed the amount of the Debtor's exemption and applicable liens. Accordingly, there is no equity in the Property for the debtors' estate. In addition, because this is a chapter 7 case, the Property is not necessary for an effective reorganization. Accordingly, Compass Bank is entitled to stay relief pursuant to 11 U.S.C. § 362(d)(2).

Compass Bank requests that the court enter an order relieving it from the automatic stay imposed by 11 U.S.C. § 362(a) as to the Debtor and the bankruptcy estate, with respect to the Property, and allowing Compass Bank to exercise its rights under the Promissory Note / Mortgage, and to obtain possession of the subject property. Copy of the proposed order is attached hereto as **Exhibit C**.

Compass Bank further requests that the court allow Compass Bank to file an amended proof of claim for any deficiency balance within 30 days of disposition of the collateral or by the claims bar date, whichever is later.

It is assumed that Debtor will not concur with the requested relief, upon failure to timely cure the arrearages referenced in the correspondence attached hereto as **Exhibit D**.

DATED this 24th day of December, 2013.

Poli & Ball, P.L.C.

By/s/James E. Shively #9597
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Phoenix, Arizona 85018
Telephone: 505-243-1887
Attorneys for Compass Bank

COPIES of the foregoing mailed
this 24th day of December, 2013, to:

Fiore and Rose Casale
1301 Montara Dr NW
Los Lunas, NM 87031
Pro Se Debtor

Linda S. Bloom
P.O. Box 218
Albuquerque, NM 87103-0218
Trustee

/s/Karma Holmes